



# MAGNUSON-MOSS ACT

## EXPLANATION OF END USER RIGHTS TO THIRD PARTY.

Without providing a complete copy of the Magnuson-Moss Act of 1975, the below is meant to aid the customer in the interpretation of the act and their comprehensive protection against any coercion around warranty by the OEM.

### REQUIREMENTS

The Act provides that any warrantor warranting a product by means of a written warranty must disclose, fully and conspicuously, in simple and readily understood language, the terms and conditions of the warranty to the extent required by rules of the Federal Trade Commission. The FTC has enacted regulations governing the disclosure of written consumer product warranty terms and conditions on consumer products actually costing the consumer more than \$15. The Rules can be found at 16 C.F.R. Part 700.

Under the terms of the Act, ambiguous statements in a warranty are construed against the drafter of the warranty. Likewise, service contracts must fully, clearly, and conspicuously disclose their terms and conditions in simple and readily understood language.

**Warrantors cannot require that only branded parts be used with the product in order to retain the warranty.** This is commonly referred to as the "tie-in sales" provisions, and is frequently mentioned in the context of third-party computer parts, such as memory and hard drives.

### FULL WARRANTY REQUIREMENTS

Under a full warranty, in the case of a defect, malfunction, or failure to conform with the written warranty, the warrantor:

- must, as a minimum, remedy the consumer product within a reasonable time and without charge;
- **may not impose any limitation on the duration of any implied warranty on the product;**
- **may not exclude or limit consequential damages for a breach of any written or implied warranty on the product, unless the exclusion or limitation conspicuously appears on the face of the warranty; and**
- **must permit the consumer to elect either a refund or replacement without charge, after a reasonable number of repair attempts if the product, or a component(s) of the product, contains a defect or malfunctions .**

In addition, the warrantor may not impose any duty, other than notification, upon any consumer, as a condition of securing the repair of any consumer product that malfunctions, is defective, or does not conform to the written warranty. However, the warrantor may require consumers to return a defective item to its place of purchase for repair.

### REMEDIES UNDER THE ACT

The Act is meant to provide consumers with access to reasonable and effective remedies where there is a breach of warranty on a consumer product. The Act provides for informal dispute-settlement procedures and for actions brought by the government and by private parties.

The FTC has been mandated by Congress to promulgate rules to encourage the use of alternative dispute resolution. Full warranties may require mediation and/or arbitration as a first step toward settling disputes.

**In addition, the federal government has the authority to take injunctive action against a supplier or warrantor who fails to meet the requirements of the act.**

Finally, consumers may seek redress in the courts for alleged violations of the Magnuson-Moss Act. A consumer who has been injured by the noncompliance of a supplier may bring an action in federal court if the amount in controversy is over \$50,000, or a class action if the number of class plaintiffs is greater than 100. If the jurisdictional amount, or number of plaintiffs, do not meet these thresholds, an action under the act may be brought only in state court. Moreover, one of the key aids to the effectiveness of the Act is that **a prevailing plaintiff may recover reasonable costs of suit, including attorney fees.**



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